

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Hannah Sampson	Team: Squad #7	CCRB Case #: 201902715	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/28/2019 6:05 PM	Location of Incident: Delancey Street and Ridge Street, via email	Precinct: 07	18 Mo. SOL 9/28/2020	EO SOL 5/15/2021	
Date/Time CV Reported Thu, 03/28/2019 7:17 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 03/28/2019 7:17 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Juan Hernandez	03610	949100	007 PCT
2. POF Erica Rivera	25743	951148	007 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Juan Hernandez	Abuse: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez stopped § 87(2)(b)	
B.POF Erica Rivera	Abuse: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Police Officer Erica Rivera stopped § 87(2)(b)	
C.SGT Juan Hernandez	Abuse: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez threatened to arrest § 87(2)(b)	
D.SGT Juan Hernandez	Discourtesy: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez spoke discourteously to § 87(2)(b)	
E.SGT Juan Hernandez	Abuse: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez refused to provide his name to § 87(2)(b)	
F.SGT Juan Hernandez	Abuse: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez refused to provide his shield number to § 87(2)(b)	
G.POF Erica Rivera	Abuse: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Police Officer Erica Rivera refused to provide her name to § 87(2)(b)	
H.POF Erica Rivera	Abuse: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Police Officer Erica Rivera refused to provide her shield number to § 87(2)(b)	
I.SGT Juan Hernandez	Force: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez used physical force against § 87(2)(b)	
J.SGT Juan Hernandez	Abuse: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez issued a summons to § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
K.POF Erica Rivera	Abuse: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Police Officer Erica Rivera issued a summons to § 87(2)(b)	
L.SGT Juan Hernandez	Abuse: On March 30, 2019, Sergeant Juan Hernandez did not process § 87(2)(b)'s complaint regarding officers.	

Case Summary

On March 28, 2019, § 87(2)(b) filed this complaint with the CCRB online.

On March 28, 2019, at approximately 6:05 p.m., Sgt. Juan Hernandez and PO Erica Rivera, both Neighborhood Coordination Officers (NCOs) in the 7th Precinct, stopped § 87(2)(b) at the intersection of Ridge Street and Delancey Street in Manhattan (**Allegations A and B: Abuse of Authority**, § 87(2)(g)). Sgt. Hernandez told § 87(2)(b) that he could either receive a summons or he could go to the precinct and get “locked up” (**Allegation C: Abuse of Authority**, § 87(2)(g)). Sgt. Hernandez then said, “Keep the shit up, and you’re going to be in the back of my fucking— in the back of my car going back to the precinct” (**Allegation D: Discourtesy**, § 87(2)(g)). (**Allegation C continued**). When § 87(2)(b) told Sgt. Hernandez that he wanted to go to the precinct, Sgt. Hernandez replied, “Go to the precinct, I don’t give a shit” (**Allegation D continued**). § 87(2)(b) alleged that he requested both officers’ names and badge numbers but that they refused to provide their information to him (**Allegations E, F, G, and H: Abuse of Authority**, § 87(2)(g)). When § 87(2)(b) requested PO Rivera’s information, Sgt. Hernandez pushed § 87(2)(b) away from her (**Allegation I: Force**, § 87(2)(g)). § 87(2)(b) was issued a disorderly conduct summons for blocking vehicular traffic (**Allegations J and K: Abuse of Authority**, § 87(2)(g)). At the end of the incident, Sgt. Hernandez told § 87(2)(b) that he received the summons for jumping in front of their vehicle and for “being a smartass” (**Allegation D continued**). Sgt. Hernandez and PO Rivera both activated their Body Worn Cameras (BWCs) during this incident and § 87(2)(b) recorded portions of the encounter using his cell phone. The full videos are linked to Board Reviews 01, 02, 03, and 04.

On March 30, 2019, at 10:21 a.m., § 87(2)(b) sent an email to the 7th Precinct NCOs detailing his encounter with Sgt. Hernandez and PO Rivera. Sgt. Hernandez did not process § 87(2)(b)’s complaint about the incident (**Allegation L: Abuse of Authority**, § 87(2)(g)).

Findings and Recommendations

Allegation A – Abuse of Authority: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez stopped § 87(2)(b)

Allegation B – Abuse of Authority: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Police Officer Erica Rivera stopped § 87(2)(b)

Allegation C – Abuse of Authority: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez threatened to arrest § 87(2)(b)

Allegation D – Discourtesy: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez spoke discourteously to § 87(2)(b)

Allegation J – Abuse of Authority: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez issued a summons to § 87(2)(b)

Allegation K – Abuse of Authority: On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Police Officer Erica Rivera issued a summons to § 87(2)(b)

It is undisputed that Sgt. Hernandez and PO Rivera drove through a red light as they entered the intersection of Ridge Street and Delancey Street in Manhattan. It is also undisputed that § 87(2)(b) was crossing the intersection at the same time and that he stopped in front of their vehicle. It is further undisputed that the officers stopped and summonsed § 87(2)(b) for blocking

vehicular traffic [BR 05], that Sgt. Hernandez threatened to arrest him, and that Sgt. Hernandez used profanity towards § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on April 10, 2019 [BR 06]. He stated that he waited at the corner of Ridge Street and Delancey Street for the pedestrian walk sign. When the walk signal appeared, he proceeded to cross Delancey Street. When § 87(2)(b) reached the middle of the crosswalk, he noticed a vehicle approaching him quickly. The vehicle “blew through” its red light on Delancey Street. § 87(2)(b) was taken aback and then noticed that it was a marked police vehicle from the 7th Precinct. The vehicle did not have its lights or sirens activated. The officers inside the vehicle – Sgt. Hernandez and PO Rivera – nearly struck § 87(2)(b) and stopped within a foot of him. § 87(2)(b) turned towards their vehicle and said, “You almost hit me. I have a walk sign. You’re blowing a red light.” § 87(2)(b) simultaneously pointed to his walk sign. § 87(2)(b) then started to take his phone out so that he could take photo of the vehicle. At the same time, Sgt. Hernandez exited the vehicle and ordered § 87(2)(b) to the sidewalk. § 87(2)(b) immediately complied. PO Rivera, who was driving the vehicle at the time, pulled over next to § 87(2)(b). PO Rivera then exited the vehicle and requested § 87(2)(b)’s license, which § 87(2)(b) immediately provided. After § 87(2)(b) provided PO Rivera his ID, she re-entered the vehicle. Sgt. Hernandez remained outside with § 87(2)(b). § 87(2)(b) repeatedly asked Sgt. Hernandez why he was being stopped but Sgt. Hernandez would not respond. § 87(2)(b) also asked why they wanted his license and told them that he wanted to leave. § 87(2)(b) also asked Sgt. Hernandez numerous times who his supervisor was and Sgt. Hernandez eventually provided the name of his lieutenant. After § 87(2)(b)’s continuous questions, Sgt. Hernandez allegedly told § 87(2)(b) to, “Shut the fuck up” and said that he was not going to answer any more of § 87(2)(b)’s “fucking questions.” Sgt. Hernandez also told § 87(2)(b) that he was “so fucking close” to cuffing him and said something to the effect of “Shut up or I’ll take you to the precinct” or “Shut up or I’ll take/throw you into a cell.” § 87(2)(b) did not recall the exact wording of the final statement, but understood the comments to mean that if § 87(2)(b) continued to ask questions about what was going on, Sgt. Hernandez was going to arrest him. § 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Sgt. Hernandez’s BWC footage [BR 01] shows that PO Rivera stopped at the red light at the intersection of Ridge Street and Delancey Street for approximately ten seconds before she drove through it. After proceeding through the light, the officers encountered § 87(2)(b) as he crossed Delancey Street. § 87(2)(b) stopped in front of the officers’ vehicle for approximately four seconds before moving to the sidewalk. He appears to say something to the officers but because there is no audio for the first 30 seconds, his comments are not captured. It is also unclear if the officers’ lights or sirens were activated or if the officers gave him any commands or instructions to move. The footage shows that after pulling over, PO Rivera asked § 87(2)(b) for his license and informed him that he was being stopped for stopping vehicular traffic, which constitutes disorderly conduct. § 87(2)(b) responded that he had a walk sign and told the officers that they nearly hit him. PO Rivera responded that § 87(2)(b) was in front of her vehicle and was not allowing her to go forward. § 87(2)(b) asked the officers what their “big hurry” was that caused them to drive through the red light. Neither officer responded to his question.

The footage shows that Sgt. Hernandez did not make the exact statements § 87(2)(b) alleged. However, at 18:07:37 hours, Sgt. Hernandez is heard telling § 87(2)(b) that the situation could go one of two ways: he could get a summons or he could go to the precinct and get “locked

up.” Sgt. Hernandez continues that the direction of the incident depends on § 87(2)(b)’s behavior and says, “Keep the shit up, and you’re going to be in my fucking— in the back of my car going back to the precinct.” § 87(2)(b) responds that he wants to go to the precinct and Sgt. Hernandez says, “Go to the precinct. I don’t give a shit.” The footage also shows that at 18:11:42 hours, Sgt. Hernandez told § 87(2)(b) that he was issued the summons for jumping in front of the officers’ vehicle and for “being a smartass.”

Sgt. Hernandez and PO Rivera were interviewed at the CCRB on July 23, 2019 [BRs 07 and 08, respectively]. Both officers stated that PO Rivera received a call on her department phone for a job at Katz’s Deli in Manhattan. Sgt. Hernandez was unsure what the job was for, but PO Rivera stated that the job pertained to an aggressive panhandler at the location. PO Rivera considered this job a priority because someone was previously stabbed by an aggressive panhandler at the same location. As the officers responded to the job, they encountered § 87(2)(b) at the intersection of Delancey Street and Ridge Street. Neither officer recalled if their lights or sirens were activated at the time. PO Rivera, who was the operator of the vehicle, observed § 87(2)(b) enter the street from behind parked cars. As § 87(2)(b) continued walking, he entered the crosswalk at the intersection. PO Rivera did not know if she had a green or red light at the time § 87(2)(b) began crossing the street. PO Rivera waved her hand to signal for § 87(2)(b) to continue walking, but § 87(2)(b) stood in front of the officers’ vehicle, screamed at them, and then started recording. PO Rivera did not know what § 87(2)(b) was screaming because her windows were closed. PO Rivera beeped her horn and said from inside the vehicle, “Sir, get out of the street.” When § 87(2)(b) refused to move, PO Rivera pulled over.

Sgt. Hernandez stated that he was not paying much attention at the time so he did not notice § 87(2)(b) until he was already stopped in front of their vehicle. Sgt. Hernandez denied that § 87(2)(b) was in a crosswalk at the time and did not recall if the officers had a red or green light as they entered the intersection. He stated that PO Rivera “whooped” her siren to signal for § 87(2)(b) to move out of the way of their vehicle but that § 87(2)(b) continued to stand in front of the vehicle, filming. Both officers stated that when § 87(2)(b) refused to move from in front of their vehicle, they pulled over to issue him a summons for blocking vehicular traffic. They were also consistent that there was no discussion between them about whether to stop § 87(2)(b) or whether to issue him the summons. As a result, the allegations were pled against both officers.

Sgt. Hernandez stated that his intention when stopping § 87(2)(b) was to issue him a disorderly conduct summons for blocking vehicular traffic. He did not recall whether he considered arresting § 87(2)(b) at any point and said that the summons was issued in lieu of an arrest. Prior to reviewing his BWC footage, he did not recall relaying to § 87(2)(b) that he could or was going to be arrested. PO Rivera said that there are circumstances where an individual can be taken to the precinct to receive a summons, but that this encounter did not require that § 87(2)(b) be brought back to the stationhouse.

Sgt. Hernandez said that § 87(2)(b) was hostile and combative and was yelling from the moment the officers stepped out of their vehicle. Aside from § 87(2)(b)’s yelling, Sgt. Hernandez did not recall anything else about § 87(2)(b)’s behavior that was hostile or combative. He also believed § 87(2)(b) was biased against officers because he said officers are always trying to run him over. Sgt. Hernandez acknowledged that § 87(2)(b)’s behavior upset him, but he did not recall anything he said in response to § 87(2)(b). Prior to reviewing his BWC footage, Sgt. Hernandez denied or did not recall using the profanity alleged.

Sgt. Hernandez was shown his entire BWC video during his CCRB interview. He confirmed that the officers proceeded through a red light at the intersection of Ridge Street and

Delancey Street, at which time they encountered § 87(2)(b) crossing the street. However, Sgt. Hernandez stated that by the time he looked up and noticed § 87(2)(b) standing in front of their vehicle, the officers had already driven under the light. Although § 87(2)(b) had the right-of-way from the traffic light, he was not utilizing the crosswalk. PO Rivera was also shown this portion of Sgt. Hernandez's BWC footage. She stated that although § 87(2)(b) had the right-of-way from the light, he was still standing in front of her vehicle, blocking her from moving forward. As such, he was guilty of blocking vehicular traffic.

Sgt. Hernandez was shown the remainder of his BWC footage. He could not provide any explanation of why he told § 87(2)(b) that he could be issued a summons or get “locked up” and said he “just made the statement.” He also could not provide a reason why he stated, “Keep the shit up and you’re going to be in my fucking— in the back of my car going back to the precinct.” He did not know why he used the profanity towards § 87(2)(b) but said he may have done so out of anger. Sgt. Hernandez also could not provide any explanation of why he stated, “Go to the precinct. I don’t give shit” or why he referred to § 87(2)(b) as a “smartass” at the end of the encounter.

As established in People v. De Bour, 40 N.Y.2d 210 (1976) officers may stop an individual when they have reasonable suspicion that the subject is committing, has committed, or is about to commit a crime [BR 09].

As per the New York State Department of Motor Vehicles, emergency vehicles will use flashing lights and sirens. These vehicles may legally pass red lights [BR 19].

According to §240.20 (5) of the New York State Penal Law, a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, or recklessly creates a risk thereof, he obstructs vehicular traffic [BR 10].

NYPD Patrol Guide Procedure 203-09 requires that officers interact with members of the public in a professional manner [BR 11].

§ 87(2)(g)

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§ 87(2)(g)

Allegation E: Abuse of Authority – On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez refused to provide his name to § 87(2)(b)

Allegation F: Abuse of Authority – On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez refused to provide his shield number to § 87(2)(b)

Allegation G: Abuse of Authority – On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Police Officer Erica Rivera refused to provide her name to § 87(2)(b)

Allegation H: Abuse of Authority – On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Police Officer Erica Rivera refused to provide her shield number to § 87(2)(b)

Allegation I: Force – On March 28, 2019, at the intersection of Delancey Street and Ridge Street in Manhattan, Sergeant Juan Hernandez used physical force against § 87(2)(b)

BWC footage confirms that § 87(2)(b) requested PO Rivera's name but that he did not request her badge number or request any information from Sgt. Hernandez. The footage also shows that when § 87(2)(b) requested PO Rivera's name, Sgt. Hernandez took hold of his arm and pushed him backwards. Lastly, the footage shows that PO Rivera verbally provided her name and badge number multiple times to § 87(2)(b) at the end of the stop. Moreover, § 87(2)(b)'s summons shows that PO Rivera clearly wrote her name on the summons.

§ 87(2)(b) alleged that he requested Sgt. Hernandez's name and badge number multiple times throughout this incident but that Sgt. Hernandez initially ignored his requests before gesturing to his shield and saying, "You don't know how to read?" § 87(2)(b) ultimately obtained Sgt. Hernandez's name and badge number by reading it from his shield. § 87(2)(b) also stated that while PO Rivera was still seated inside the police vehicle, he requested her name and badge number multiple times, including once when he turned towards her and asked for her name. When § 87(2)(b) turned towards her to request the information, Sgt. Hernandez shoved § 87(2)(b) in the chest and accused him of getting too close to PO Rivera. PO Rivera never verbally provided her name or badge number to him. § 87(2)(b) did not obtain PO Rivera's name until he saw it written on his summons [BR 12].

Sgt. Hernandez's BWC footage shows that § 87(2)(b) did not request Sgt. Hernandez's name or badge number and shows that he recited the information aloud from Sgt. Hernandez's shield. The footage also shows that § 87(2)(b) did not request PO Rivera's badge number; however, it shows that at 18:10:02 hours, § 87(2)(b) turned to PO Rivera – who was seated inside the vehicle – and requested her name. The door to the vehicle was fully open at the time. The

footage shows that Sgt. Hernandez did not shove § 87(2)(b) in the chest as alleged; rather, he took § 87(2)(b) by the arm and propelled him backwards. When § 87(2)(b) requested PO Rivera's name, he was standing several feet from her, did not make any threatening movements or statements towards her, and was not speaking in an elevated tone of voice. Sgt. Hernandez is heard telling § 87(2)(b) that he was close to being handcuffed because he was getting too close to PO Rivera. PO Rivera's BWC footage [BR 02] and § 87(2)(b)'s video [BR 03] show that after his request, PO Rivera briefly turned towards § 87(2)(b) but that Sgt. Hernandez immediately interjected and moved § 87(2)(b) away from PO Rivera. In his interview, Sgt. Hernandez stated that when § 87(2)(b) addressed PO Rivera, he stepped "really close" to her (described as being within an arm's length) while she was not paying attention. As a result, Sgt. Hernandez grabbed § 87(2)(b) by his arm and escorted him backwards for PO Rivera's safety. Aside from stepping towards PO Rivera, there was nothing else that was threatening about § 87(2)(b) at that time.

PO Rivera stated that she did not recall § 87(2)(b) requesting her name while she was seated in the vehicle and said that she only recalled him requesting her name and badge number at the end of the incident, as she gave him the summons. PO Rivera provided her name and badge number to him at that time. PO Rivera's BWC footage confirms that at 18:11:29 hours, she verbally provided § 87(2)(b) with her name and badge number multiple times as she issued him the summons.

NYPD Patrol Guide Procedure 203-09 states that officers are to provide their name and shield number to anyone who requests they do so.

NYPD Patrol Guide Procedure 221-01 states that officers may use force when it is reasonable to ensure the safety of a member of the service. In all circumstances, any application or use of force must be reasonable under the circumstances [BR 13].

§ 87(2)(g)

Allegation L: Abuse of Authority – On March 30, 2019, Sergeant Juan Hernandez did not process § 87(2)(b)'s complaint regarding officers.

It is undisputed that on March 30, 2019, § 87(2)(b) sent an email to the 7th Precinct NCOs detailing his encounter with Sgt. Hernandez and PO Rivera. It is further undisputed that Sgt. Hernandez did not forward § 87(2)(b)'s complaint to IAB or the CCRB.

§ 87(2)(b) stated that following this incident, he emailed all the 7th Precinct NCOs describing what happened. § 87(2)(b) denied that he mentioned wanting to file a complaint about this incident in his email. However, § 87(2)(b) provided a copy of the email he sent to the NCOs [BR 14] which shows that the subject line of his email read, "Report on Misconduct – Thursday March 28 – Sergeant Hernandez and Officer Rivera." In the email, he described that Sgt.

Hernandez refused to provide his name and badge number, used profanity towards him, threatened to arrest him, and pushed him. Although § 87(2)(b) did not explicitly state that he wished to file a formal complaint about the incident in his email, he characterized the email as a report on misconduct and detailed numerous FADO allegations. As a result, the investigation determined that this email served as a complaint against the officers.

Although his email was addressed to numerous NCO officers, Sgt. Hernandez was the highest-ranking officer on the email. Therefore, the investigation concluded that he was responsible for processing the complaint and the allegation was pled solely against him.

Sgt. Hernandez did not recall receiving an email from § 87(2)(b) following this incident. He was shown a screenshot of the email § 87(2)(b) sent to the 7th Precinct NCOs. Sgt. Hernandez confirmed that “juan.hernandez2” is the handle of his NYPD email address. Sgt. Hernandez briefly reviewed the email and stated that it did not look familiar and he did not recall receiving it. None of the other NCOs addressed on the email brought the email to Sgt. Hernandez’s attention. Sgt. Hernandez said when they receive an email from a civilian that alleges police misconduct, they are to send the correspondence through the proper channels. Depending on the nature of the complaint, that could require notifying the CCRB. Because Sgt. Hernandez did not recall receiving § 87(2)(b)’s email, he did not have any knowledge that § 87(2)(b) wished to file a complaint about this incident.

NYPD Patrol Guide Procedure 207-31 states that officers are to report all misconduct complaints to the Civilian Complaint Review Board [BR 15].

§ 87(2)(g)
[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party [BR 16].
- Sgt. Hernandez has been a member of the service for nine years and has been named a subject in four CCRB complaints and six allegations, none of which were substantiated.

- § 87(2)(g) [REDACTED]
- PO Rivera has been a member of the service for eight years and has been named a subject in three CCRB complaints and three allegations, one of which was substantiated:
 - 201302407 involved a substantiated stop allegation against PO Rivera. The CCRB recommended Command Discipline and the NYPD imposed Command Discipline A.
 - § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.

- As of August 13, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint [BR 17].

§
87(2)(c)

§ 87(2)(c), § 87(2)(b)

Squad No.: ___7___

Investigator: _____
 Signature Print Title & Name Date

Squad Leader: _____
 Signature Print Title & Name Date

Reviewer: _____
 Signature Print Title & Name Date